Supreme Court, U. S.
FILED
APR 30 1980
MICHAEL RODAK, JR., CLERK

IN THE UNITED STATES SUPREME COURT

WASHINGTON, D.C.

CASE NO. 79-1710

ROBERT J. KONDRAT
Petitioner

vs.

BARRY M. BYRON
Respondent

PETITION FOR WRIT OF CERTIORARI

ROBERT J. KONDRAT, pro se
29121 Chardon Road
Willoughby Hills, Ohio 44092
(216) 944-0140

ABRAHAM CANTOR
Byron and Cantor
330 Lake West Medical
Building
36100 Euclid Avenue
Willoughby, Ohio 44094
(216) 951-2303
Attorney for Respondent

TABLE OF CONTENTS

RULE SUBPARAGRAPH NO.		PAGE NO.
23a)	Court References.....	1
23b)	Statement of the Grounds.....	1
23c)	Questions Presented for Review..	2
23d)	Constitutional Provisions.....	2
23e)	Statement of the Case.....	2
23f)	Jurisdiction.....	5
23g)	Not applicable.....	-
23h)	Argument.....	7
	SERVICE.....	13
	APPENDIX	
23i)	Exhibit A (2 pages).....	15
	Opinion of Court of Appeals -(4 pages).....	17
	Opinion of Common Pleas Court -(4 pages).....	21
23j)	Decree of Ohio Supreme Court....	25
	Judgement Entry of Court of Appeals.....	26
	Judgement Entry of Common Pleas Court.....	27
	Judgement Entry of Common Pleas Court.....	28
	Judgement Entry of Common Pleas Court.....	29

PETITION FOR WRIT OF CERTIORARI

In accordance with the following applicable subparagraphs of Rule 23 of the Supreme Court of the United States, Petitioner petitions this court for a writ of certiorari to review judgement of the State of Ohio courts.

23a) In the official report delivered by the State of Ohio Supreme Court, Petitioner's appeal to that court was dismissed for the reason that no substantial constitutional question existed. Appended hereto is copy of same report.

23b) The date of the last decree sought to be reviewed is March 14, 1980. Others are as appended hereto. The statutory provision conferred on this court to review the decree in question by writ of certiorari, is Article III of the Constitution of the United States, which created the Supreme Court as a constitutional court, giving judicial

power to all cases, in law and equity, that arises under the Constitution.

23c) The question presented for review: Is the Respondent's defense of probable cause constitutional, when that probable cause was deliberately created by the Respondent for the purpose of retribution and bringing injury to others?

23d) The constitutional provision which the case involves is the Fourteenth Amendment to the Constitution which guarantees due process of law.

23e) In December, 1977, Petitioner filed a complaint in the court of first instance, naming Respondent and other defendants, as acting together and in concert, to cause the arrest and prosecution of Petitioner, without probable cause, for wrongful purposes, and in a malicious manner. The complaint

indicated that Petitioner was arrested and incarcerated for a period of seven days. Thereafter, in July, 1977, the trial court directed a verdict in favor of Respondent after the State had put on its case (State of Ohio vs. Robert Kondrat 76-CR 473). The trial court's decision laid bare the Respondent's scheme of criminal activity against Petitioner. (See pages 15 & 16 Appendix). Thereafter, Petitioner went to court to seek a remedy to relieve him of damages and injuries. Subsequently the Respondent submitted a Motion to Dismiss. Respondent's motion was denied. Respondent than submitted a Motion for Summary Judgement pleading his fabricated criminal activity which the trial court had already recognized as fabricated. Without reason, the lower court sustained Respondent's

Motion for Summary Judgement.

Petitioner appealed to the Eleventh Appellate District Court, asking to reverse the lower court's decision because Respondent's Motion for Summary Judgement was pleaded on data fabricated by Respondent. The Respondent attempted to introduce his fabricated evidence in a Request For Admissions. Petitioner objected in a Brief In Opposition to Request for Admissions. Respondent again attempted with his Motion for Order Compelling Discovery. And, again Petitioner objected to Motion For Order Compelling Discovery, Notice and Memorandum. The court then made a JUDGEMENT ENTRY which OVERRULED Respondent's Order Compelling Discovery. The court then rendered a decision in favor of Respondent, stating that there was probable cause to institute the arrests. Petitioner appealed to the

Ohio Supreme Court asking to reverse the lower court's Judgement Entry sustaining Respondent's Motion for Summary Judgement citing the Fourteenth Amendment to the Constitution of the United States, in its entirety and the fact of the fabricated probable cause. The Ohio Supreme Court dismissed the appeal for reason that no Constitutional question existed.

23f) This court is asked to permit the writ because the court of appeals has decided an important question of law in conflict with the Constitution. This Amendment guarantees that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any

person within its jurisdiction the equal protection of the laws". Yet, the Appellate Court's decision is in direct conflict with this Amendment. In effect the Appellate Court's decision has said that a Law Director of a city may seek retribution against anyone by fabricating probable cause against others and then he may use this probable cause as a defense if he is sued. Is this to be in accord with the Fourteenth Amendment?

23g) Not applicable to this case.

23h) Petitioner's court experiences has indicated that the judiciary could not exist without the close cooperation of the legal/political cadre. Nor could the legal/political faction exist without the protection from the judiciary. The two are wedded together and are dependant upon each other. In Lake County, this marriage serves basically two functions. One is to conceal corruptness and/or injustices brought about by its members and secondly; to assist each other in the productive extraction of monetary and materialistic values. The events of the Willoughby Hills Four could occur to any citizen anywhere unless it is brought to a halt by a judiciary dedicated to justice. For clarification purposes, the legal/political faction is referred to herein as one entity due to the large proportion of legal representation to be found in the political circle. Where the legal representation appears not to be found in the political circle, then generally the politician is nothing but a figurehead, but is still guided behind the scenes by the legal profession.

The combined legal/political/judicial faction exerts its power on every community,

business, household and individual in Lake County. Although this group is unproductive and contributes nothing to the economy, it thrives on the misery it creates for others. Yet, prides itself behind a mask of balanced scales. The depth of this facade is being measured.

This combined faction appears to maintain its power and influence over all by enforcing two important rules. The first is to exclude outsiders from its fraternity. In this way the group may go about its business without fear of exposure to the public. Dissidents within its ranks can expect to be disbarred, while outsiders can expect to be faced with unfavorable decisions. This type of treatment of the Petitioner and non-legal or the outsider, who seeks justice, is being denied due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Justice is not a tool to be manipulated at the discretion of the judiciary for the sake of a privileged few or special group. Justice is meant for all.

The second factor that this combined group exerts to maintain its power and influence, is fear. This mode of unsuspected brainwashing, subjected upon the citizenry,

has wrecked havoc, not only in Lake County, but is evident in the nation. People have come to be afraid to defend their homes for fear of being sued by the intruder; afraid to assist others in distress for fear of ending up in court; afraid to carry a petition or exercise their Constitutional rights for fear of government retribution (as was in this case). These and other implanted programs have subconsciencely destroyed the peoples' will. This has not only contributed to the decline of confidence in Lake County but is manifest throughout this country.

These may be strong and inappropriate words for this argument, however, the Petitioner feels they are necessary at this time for the judiciary if they are to reappraise their position and reevaluate their responsibilities to

the people they serve. In this case, the judiciary in its attempt to salvage its own, has left a trail comparable to that of a wounded animal dragging itself through the snow. The more that the courts tried to hide from the facts, or escape the facts, the deeper it sank. And, it will continue to sink, unless a readjustment of its attitude is made.

The Respondent at this point is confident of riding his way through. He possesses the power, connections and backing of a dictatorial robe to do so. However, is this to be considered justice? Is this in keeping with the Fourteenth Amendment to the United States Constitution which in part states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

> of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

Petitioner would like to reiterate the words spoken at an Appellate Court's hearing of January, 1979. They were:

> "Today's case is a case contested by a Plaintiff possessing the evidence and a Defendant possessing the connections. This court's decision will show which is the more important -- the evidence and justice, or position and connections".

The above words still hold true today. The court's requirements as to formality and procedure may not have been adhered to herein for this case because the Petitioner considers this case to be too important and of great significance to each and every American. In addition, it has become evident to the Petitioner that regardless of how perfect the presentation, or, how clear the issue may be, the court will find something wrong

or, if there is nothing wrong, the court will invent something. As a result of prior court experiences, there is nothing to be gained by being precise.

The Petitioner is interested in justice -- an examination of the facts and a decision based on the facts. Petitioner is not interested in a legal shell game, played at the expense of the taxpayers. Decisions based on twisted law and contorted technicalities to be used at the court's option, never achieved a useful purpose. The latter methods, which may be acceptable to the courts, only discredit the entire purpose of its establishment. These methods are not in the interest of the people who have come to rely upon the judicial system for justice.

The facts in this case are crystal clear. There is no need to repeat them again. Hence, they are not repeated herein. The Respondent's decision in an Appellate

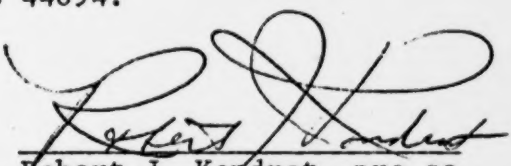
court is based upon material which even the trial court had refused to accept. Material obtained unlawfully, without the Miranda warning (see State of Ohio vs. Robert J. Kondrat, Case No. 76-CR 473), trumped-up by the Respondent, as proven by the trial, and carried out in a vicious conspiratorial scheme with others.

The Respondent was caught red-handed in his scheme and Petitioner would expect that the law would be applied equally to a member of the bar as it is applied to any citizen. Any decision less than that would only magnify the questioned integrity of the judiciary. This court is asked to grant the Petition for Writ of Certiorari and halt those who traduce the Constitution of the United States.

SERVICE

A copy of the foregoing PETITION FOR WRIT OF CERTIORARI was mailed by regular United

States mail, first class postage prepaid, on this 28th day of April, 1980 to Attorney for Respondent, Abraham Cantor, Byron and Cantor, 330 Lake West Medical Building, 36100 Euclid Avenue Willoughby, Ohio 44094.



Robert J. Kondrat, pro se
29121 Chardon Road
Willoughby Hills, Ohio
44092

cc: News Media

to cure any defect; and the defect which occurred of them all was the defect in the solicitor's affidavit as to qualified affidavit.

THE COURT: Have you ever -- the City of Willoughby Hills ever notified the defendant that there was a defect, directly, let alone within the ten-day period?

MR. FUTTERER: The Clerk stated she didn't directly. She notified the head of the committee, Mrs. Macko, and a couple of the others. The evidence speaks for itself.

THE COURT: And leaves some doubt, doesn't it, work as to a reasonable doubt?

MR. KLINGENBERG: In fact, if this case goes further, what we're going to have to do is bring in Barry Byron and confront him with the letter which he sent during the grace period to Secretary Ted Brown, accusing the defendant of criminal activity in these false affidavits. In other words, rather than giving him the chance to correct things in confronting him with the problem, with the defect, what was done was criminal evidence was being gathered, the deposition being taken, and this case was being laid against the defendant.

EXHIBIT "A"

THE COURT: And no evidence that he received the Miranda warning or that he was a suspect came in in a civil case. They compelled his attendance, cross-examined him or examined him--I'm not sure if it was direct or cross-- and without the Miranda warning, without telling him what charges they were investigating. I think that the deposition should be stricken, and it is so ordered; and that the Clerk's failure to comply with the Charter, of which I must take judicial notice, that the defendant did not receive the notice he was entitled to, to make any correction in that ten-day period, I'm going to direct the verdict at this time.

Mr. Kondrat, I'm kind of sorry to do this. I wanted to hear your side of the case.

MR. KLINGENBERG: All 50 witnesses.

THE COURT: That's all for the record. I'll just tell the jury what I have done.

- - - - -

THEREUPON, the jury returned to the courtroom, and the following proceedings were had:

THE COURT: Ladies and gentlemen

EXHIBIT "A"

STATE OF OHIO, LAKE COUNTY

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

FILED
COURT OF APPEALS
DEC 3 1979
MELVIN S. REED
CLERK OF COURT
LAKE COUNTY, OHIO

ROBERT J. KONDRAT,

PLAINTIFF-APPELLANT,

- VS -

PAUL MITROVICH and STEPHEN J. FUTTERER,

DEFENDANTS-APPELLEES.

CASE NO. 7-073

RECEIVED
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OPINION.

ROBERT J. KONDRAT,

PLAINTIFF-APPELLANT,

- VS -

BARRY M. BYRON, ET AL,

DEFENDANTS-APPELLEES.

CASE NO. 7-093

APPEARANCES.

Robert J. Kondrat, Pro Se, 29121 Chardon Road, Willoughby Hills, Ohio

Abraham Cantor, Painesville, Ohio for Defendants-Appellees.

Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio, JJ.,
of the Seventh Appellate District,
and
Hon. Sam H. Bell, J., of the
Ninth ~~Eighth~~ Appellate District, Sitting
by Assignment in the Eleventh
Appellate District.

Dated: December 3, 1979

O'NEILL, J.

This cause originated in the lower court when the present appellant, Robert J. Kondrat, filed a complaint naming Paul Mitrovich, Stephen Futterer, Barry Byron and other unnamed defendants.

The complaint alleged that at all times material thereto, Paul Mitrovich was the Prosecuting Attorney of Lake County, Ohio; Stephen Futterer was an Assistant Prosecuting Attorney of Lake County, Ohio; and Barry Byron was Law Director of the City of Willoughby Hills, Ohio.

The complaint further alleged that the unnamed defendants furnished various bits of information to Mr. Mitrovich and his assistants and that thereafter with this information each and all of the defendants caused Mr. Mitrovich by himself or through his assistant, Mr. Futterer, to cause the arrest of plaintiff on four counts of perjury. The complaint went on to allege that all charges were ultimately dismissed and that the arrests were false and wrongful causing damage to the plaintiff.

Defendants Mitrovich and Futterer filed a motion for summary judgment (10-19-78). Attached thereto were their affidavits affirming that all acts alleged in the complaint were performed by them in their official capacities and duties. The trial court sustained this motion on January 10, 1979. The court advanced as support for his judgment, the finding that defendants Mitrovich and Futterer were entitled to immunity in the performance of their official duties. Upon the matters before him, the pleadings and affidavits, the trial judge was not in error in his judgment. The complaint

alleged and defendants Mitrovich and Futterer admitted that at all pertinent times they were officially designated prosecutors. The U.S. Supreme Court has ruled that actions of a prosecutor within his official parameters are clothed with immunity. In the case of Imbler v. Pachtman, 47 L. Ed. 2d 128, the United States Supreme Court held that a state prosecutor who acted within the scope of his duties in initiating and pursuing a criminal prosecution was absolutely immune from a civil suit for deprivations of the defendants' constitutional rights. The court further held that such immunity was applicable even where the prosecutor knowingly used perjured testimony, deliberately withheld exculpatory information, or failed to make full disclosure of all facts casting doubt upon the state's testimony. The judgment of the trial court as to defendants Mitrovich and Futterer is affirmed.

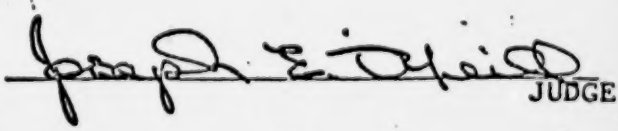
The complaint did not allege any specific acts as to defendant Barry Byron. It simply alleged "all of the Defendants" caused defendants Mitrovich and Futterer to bring about the arrest of plaintiff. Defendant Byron filed a "Request for Admissions" requesting the plaintiff to admit that he had not seen a person named Jack O. Yeager sign a re-call petition even though plaintiff, under oath, had sworn that he witnessed such signature. This "Request" was not answered. Pursuant to Rule 36, Ohio Rules of Civil Procedure, the failure to respond, amounted to an admission of perjury. On October 30, 1978, defendant Byron filed a motion for summary judgment citing to the court's attention the aforementioned admission. There was also attached to the motion an affidavit by Jack O. Yeager swearing that he had

never affixed his signature to the recall petition which plaintiff, under oath, had sworn he circulated and witnessed all signatures. There was also an affidavit by Marcille Yeager wherein she swore that she signed the signature of Jack O. Yeager to the petition but not in the presence of plaintiff Kondrat. There were also attached copies of four petitions bearing the plaintiff's jurat that he had witnessed all the signatures thereto. These copies were certified by the Clerk of Council for the City of Willoughby. Each petition bore the signature of Jack O. Yeager and it was these signatures he denied signing and these signatures were admittedly affixed by his wife. Plaintiff's response raised no probative nor credible rebuttal. The court sustained the motion, properly, The motion raised four instances of perjury. The plaintiff did not meet the issue. The complaint alleged four arrests for perjury. Upon the pleadings and affidavits, the trial court could reasonably conclude that there was probable cause to institute the arrests and that plaintiff was not entitled to judgment.

Judgment affirmed.

Donofrio, J., concurs.
Bell, J., concurs.

APPROVED:



JUDGE

Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio, JJ., Seventh District;
Hon. Sam H. Bell, Ninth District;
By Assignment to Eleventh District.

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

CASE NO. 77 CIV 0917

ROBERT J. KONDRAT)
)
PLAINTIFF)
)
VS) OPINION
)
PAUL MITROVICH ET AL)
)
DEFENDANTS)

THE HONORABLE J. WARREN BETTIS, JUDGE

APPEARANCES:

MR. HERBERT BRAVERMAN, Cleveland, Ohio
ON BEHALF OF PLAINTIFF

MR. CHARLES E. COULSON, Painesville, Ohio
ATTORNEY FOR DEFENDANT FUTTERER

MR. PAUL MITROVICH, Willowick, Ohio
ON BEHALF OF DEFENDANT MITROVICH

MR. GEORGE HASKKELL, Painesville, Ohio
ON BEHALF OF DEFENDANT BYRON

MARY BANAR
ASSISTANT COURT REPORTER

THE COURT:

Plaintiff has brought an action for malicious prosecution and false arrest against the Prosecuting Attorney of Lake County, Ohio, an Assistant Prosecuting Attorney of said County, the Law Director of Willoughby Hills, Ohio, and certain unknown Defendants.

The Defendants have filed motions to dismiss for failure to state a claim upon which relief may be granted. Defendants Futterer and Mitrovich have also asked for Summary Judgment in the alternative.

The Defendants base their motions on the claim of absolute prosecutorial immunity. Defendants cite the case of Imbler v. Pachtman, 424 U.S. 409, 47 L. Ed. 2d 128 (1976) as being applicable herein.

The Imbler case dealt with a situation in which the Plaintiff had knowingly used false testimony and suppressed evidence, when the Plaintiff had been prosecuted for murder ten years earlier. The Plaintiff brought the action under 42 U.S.C. Section 1983 seeking damages for unlawful prosecution.

The Supreme Court discussed the necessity of protecting prosecutors from undue harassment and enabling them to retain independent judgment, and went on to hold that a State Prosecutor has absolute immunity under Section 1983 when he acts within the scope of his prosecutorial duties, i.e. when he performs acts permitted by law.

The Court, however, distinguished between activities which are an integral part of the judicial process (Prosecutor's

role as advocate in initiating prosecution and presenting the case) and those which are performed by the prosecutor in the role of administrator or investigator.

In this regard, the Supreme Court stated with reference to the Ninth Circuit Court of Appeals opinion below:

"The purpose of the Court of Appeals' focus upon the functional nature of the activities rather than the respondent's status was to distinguish and leave standing those cases, in its circuit and some others, which hold that a prosecutor engaged in certain investigative activities enjoys not the absolute immunity associated with the judicial process, but only a good faith defense comparable to a policeman's. ...We agree with the Court of Appeals... 424 U.S. 409, at 430.

Thus, in some instances a prosecutor is entitled only to a qualified, good faith immunity, rather than an absolute one. See, Williams vs. Wright, 432 F. Supp. 732 (1976); Helstoski v. Goldstein, 552 F. 2d 564 (3rd Cir. 1977).

For this reason, the Court finds that it is necessary to hear more evidence in this case to determine what type of alleged prosecutorial activity is involved herein.

The Court notes that defendants Mitrovich and Futterer also claim as a basis for dismissal the fact that the warrant to arrest Plaintiff was issued pursuant to a Grand Jury indictment. This fact does not alter the Court's conclusion.

Therefore, the Motions to dismiss made by Defendants Mitrovich, Futterer and Byron are denied.

Insofar as an issue of fact does exist in the within case, the motions made by Defendants Mitrovich and Futterer for summary judgment are also denied.

J. WARREN BETTIS, JUDGE

DATED: May 23, 1978

SC-10A 79-10-1 BARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

THE SUPREME COURT OF OHIO

RECEIVED MAR 17 1980

THE STATE OF OHIO,
City of Columbus.

Robert J. Kondrat,
Appellant,
vs.
Barry r. Byron,
Appellee.

19 80 *TERM*
To wit: March 14, 1980

No. 80- 20

APPEAL FROM THE COURT OF APPEALS

for LAKE *County*

This cause, here on appeal as of right from the Court of Appeals for LAKE *County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.*

FOR YOUR INFORMATION ONLY NOT FOR FILING

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for LAKE *County for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this.....day of..... 19.....

.....*Clerk*

.....*Deputy*

FILED
COURT OF APPEALS
DEC 3 1979
MELVIN S. REED
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

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DEC 4 1979

ROBERT J. KONDRAT

Appellant

- vs -

PAUL MITROVICH, ET AL.

Appellees

JUDGMENT ENTRY

CASE NO. 7-093

This cause came on to be heard upon the Record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each Assignment of Error was reviewed by the Court and disposed of as set forth in this Court's Opinion, which is incorporated herein by reference.

It is ordered that appellee recover of appellant the costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

JUDGE JOSEPH E. O'NEILL, Seventh District, Sitting by Assignment
FOR THE COURT
(JOSEPH DONOFRIO, Seventh District; SAM H. BELL, Ninth District, By Assignment to Eleventh District)

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	
	)	
PLAINTIFF	)	CASE NO. 77 CIV 0917
	)	
VS	)	JUDGMENT ENTRY
	)	
PAUL MITROVICH, ET AL	)	
	)	
DEFENDANTS	)	

This matter comes on for decision on Defendant Barry M. Byron's Motion for Summary Judgment.

Motion sustained.

J. Warren Bettis

J. WARREN BETTIS, JUDGE

DATED: February 15, 1979

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IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

CASE NO. 77 CIV 0917

Received 10-10-78

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MELVIN C. REED
LAKE CO. CLERK OF COURTS

ROBERT J. KONDRAT

PLAINTIFF

VS

PAUL MITROVICH, ET AL

DEFENDANTS

JUDGMENT ENTRY

Motion of Defendant Byron for an order compelling discovery OVERRULED. The Court directs counsels attention to the second sentence of the second paragraph of Rule 36: "The matter is admitted unless, within the period designated in the request, not less than twenty-eight days after the service thereof or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission, a written answer or objection addressed to the matter, signed by the party or his attorney."

J. WARREN BETTIS, JUDGE

Dated: September 28, 1978

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	
	)	
PLAINTIFF	)	CASE NO. 77 CIV 0917
	)	
VS	)	JUDGE: J. WARREN BETTIS
	)	
PAUL MITROVICH ET AL	)	
	)	JUDGMENT ENTRY
DEFENDANT	)	

Motions to dismiss made by Defendants Mitrovich, Futterer and Byron are denied.

Motions of Futterer and Mitrovich for Summary Judgment are denied.

See Opinion.

J. WARREN BETTIS, JUDGE

DATED: May 23, 1978

Supreme Court, U. S.
FILED
JUN 2 1980
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1979
No. 79-1710

ROBERT J. KONDRAT,
Petitioner,

vs.

BARRY M. BYRON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ABRAHAM CANTOR
BYRON AND CANTOR
Suite 330
36100 Euclid Avenue
Willoughby, Ohio 44094
Telephone: (216) 951-2303
Attorney for Respondent

ROBERT J. KONDRAT, PRO SE
29121 Chardon Road
Willoughby Hills, Ohio 44092
Petitioner

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS

OPINIONS BELOW 1
JURISDICTIONAL STATEMENT 2
QUESTION PRESENTED 2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2
STATEMENT OF CASE 2
ARGUMENT 4
1. Probable Cause for the Institution of a Criminal Prosecution Is a Complete Defense to a Civil Complaint Alleging Malicious Prosecution 4
CONCLUSION 6
APPENDIX A1

TABLE OF AUTHORITIES

Cases

Epling v. Express Co., 55 Ohio App. 2d 59 (Medina Co. 1977) 6
Kinter v. Cheeks, 71 Ohio App. 333 (Cuyahoga Co. 1942) 5-6
Macko v. Monzula, 48 Ohio St. 2d 35 (1976) 2
Rogers v. Barbera, 170 Ohio St. 241 (1960) 6

Statutes and Rules

28 U.S.C. §1254 2
42 U.S.C. §1983 4

Other Authorities

52 AM. JUR. 2d, *Malicious Prosecution*, §50 6
35 OHIO JUR. 2d, *Malicious Prosecution*, §24 5

Supreme Court of the United States

October Term, 1979
No. 79-1710

ROBERT J. KONDRAT,
Petitioner,

vs.

BARRY M. BYRON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Ohio Supreme Court in Case No. 80-20 on March 14, 1980, *sua sponte* dismissed Petitioner's appeal for the reason that no substantial constitutional question existed.

On December 3, 1979, the Eleventh District Court of Appeals of Ohio, in Case No. 7-093, affirmed the Summary Judgment granted by the Lake County Common Pleas Court on February 15, 1980 in Case No. 77-CIV-0917.

JURISDICTIONAL STATEMENT

Petitioner filed a petition for a Writ of Certiorari on April 29, 1980 pursuant to 28 U.S.C. §1254.

QUESTION PRESENTED

Is the Respondent's defense of probable cause constitutional when that probable cause was deliberately created by the Respondent for the purpose of retribution and bringing injury to others?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

No constitutional issues were raised or argued in the courts below by Petitioner or his retained counsel.

STATEMENT OF THE CASE

The Petitioner was indicted by the Lake County Grand Jury for his improper conduct in the certification of recall part-petitions concerning the Mayor and certain councilmen of the City of Willoughby Hills, Ohio and his testimony before a court reporter in a related mandamus proceeding before the Ohio Supreme Court. See *Macko v. Monzula*, 48 Ohio St. 2d 35 (1976). These charges were subsequently dismissed by a trial court.

On October 15, 1978, Petitioner, then represented by retained counsel, filed a Complaint alleging malicious prosecution by the Prosecuting Attorney of Lake County, Ohio, an Assistant County Prosecuting Attorney, and the Respondent, Barry M. Byron, Director of Law of Willoughby Hills, Lake County, Ohio. As the Eleventh Dis-

trict Court of Appeals stated, the Complaint did not allege any specific acts attributable to Respondent, Barry M. Byron.

Respondent filed Requests for Admission pursuant to the Ohio Rules of Civil Procedure, but Petitioner failed to answer these requests. Next, the Respondent filed a Motion for Summary Judgment. Attached to this Motion were five Affidavits:

(1) The Affidavit of Jack O. Yaeger stating he had never signed recall part-petitions concerning the Mayor and certain councilmen of the City of Willoughby Hills, Lake County, Ohio;

(2) The Affidavit of Marcille I. Yaeger in which she admitted signing two names to the aforementioned recall part-petitions, her husband, Jack O. Yaeger's signature and her own;

(3) The Affidavit of Dr. Phillip Bouffard, a handwriting expert, who confirmed that the signatures of Jack O. Yaeger which appeared on the recall part-petitions were not written by Jack O. Yaeger;

(4) The Affidavit of the Clerk of Council, Willoughby Hills, Ohio who attached the questioned part-petitions in which Petitioner certified that Jack O. Yaeger had signed the part-petitions in his presence; and

(5) The Affidavit of Respondent who was present at the deposition held in a civil proceeding in which Petitioner stated under oath that he saw Jack O. Yaeger, sign the part-petitions in question. A transcribed portion of the deposition was attached to this Affidavit.

The Petitioner filed a Brief in Opposition to the Motion for Summary Judgment, but submitted no affidavits,

exhibits or other evidence or argument denying the truthfulness of the submitted affidavits.

The Lake County Common Pleas Court granted Respondent's Motion for Summary Judgment on February 20, 1979.

The Eleventh District Court of Appeals affirmed the decision of the trial Court on December 3, 1979.

The Ohio Supreme Court *sua sponte* dismissed this action for want of a substantial constitutional question on February 15, 1980.

ARGUMENT

1. PROBABLE CAUSE FOR THE INSTITUTION OF A CRIMINAL PROSECUTION IS A COMPLETE DEFENSE TO A CIVIL COMPLAINT ALLEGING MALICIOUS PROSECUTION.

Petitioner again returns to this court in a *pro se* action requesting the granting of a Writ of Certiorari. Earlier this term, Petitioner filed a *pro se* action in Case No. 79-833 requesting the granting of a Writ of Certiorari. The earlier case revolved around an alleged denial of Petitioner's constitutional rights pursuant to Title 42 U.S.C. §1983 in his criminal prosecution for election falsification and perjury. This Court denied Certiorari on September 13, 1979.

Although Petitioner files this pleading *pro se*, it should be noted that the original pleadings filed with the trial court were filed by retained counsel who subsequently withdrew. Petitioner's experience, however, as a *pro se* litigant is enormous (See Appendix A).

Petitioner's Complaint alleged that the Respondent, Barry M. Byron, along with the Lake County Prosecuting

Attorney and an Assistant County Prosecuting Attorney caused his indictment for criminal acts from which he was subsequently discharged.

The uncontroverted evidence presented to the trial court including unanswered Requests for Admission and Affidavits conclusively showed that the Petitioner could not have witnessed Jack O. Yaeger sign recall part-petitions as he certified on the recall part-petitions which were placed on file with the Willoughby Hills Clerk of Council, or as he testified before a court reporter while under oath.

The Affidavit presented from Jack O. Yaeger stating that he did not sign the part-petitions as certified by the Petitioner and the Affidavit of Marcille I. Yaeger who stated under oath that she signed her husband, Jack O. Yaeger's name, as well as her own on the recall part-petitions in question were not opposed by counter Affidavits on behalf of Petitioner.

The unanswered Requests for Admission covering this subject matter, and the uncontroverted Affidavits clearly showed that the conduct of Petitioner, for which he was indicted by the Lake County Grand Jury, was based upon probable cause.

The Ohio Court of Appeals stated:

> "Defendant Byron filed a 'Request for Admissions' requesting the plaintiff to admit that he had not seen a person named Jack O. Yaeger sign a re-call petition even though plaintiff, under oath, had sworn that he witnessed such signature. This 'Request' was not answered. Pursuant to Rule 36, Ohio Rules of Civil Procedure, the failure to respond, amounted to an admission of perjury." (Ohio Court of Appeals, page 3).

When probable cause exists, it is an absolute protection against an action for malicious prosecution in Ohio. 35 OHIO JUR. 2d, *Malicious Prosecution,* §24; *Kintner v.*

Cheeks, 71 Ohio App. 333 (Cuyahoga Co. 1942); *Epling v. Express Co.,* 55 Ohio App. 2d 59 (Medina Co. 1977). Probable cause constitutes a complete defense even when there is express malice present. 52 AM. JUR. 2d, *Malicious Prosecution,* §50; *Rogers v. Barbera,* 170 Ohio St. 241 (1960).

The admissions of the Petitioner, and the Affidavits attached to the Motion for Summary Judgment, conclusively demonstrated that probable cause existed for the Petitioner's criminal prosecution, and therefore, a complete defense to a cause of action for malicious prosecution was properly shown to the trial court.

Further and perhaps most importantly, the Petitioner, at no time and in no Ohio Court, raised any state or federal constitutional issue.

CONCLUSION

The Respondent respectfully requests that this Honorable Court deny jurisdiction. The trial court and the Court of Appeals were amply provided with a record which clearly demonstrated that the Respondent was entitled to a judgment based upon settled principles of law. The Ohio Supreme Court has further concluded that this matter lacks a substantial constitutional issue.

Respectfully submitted,

ABRAHAM CANTOR
BYRON AND CANTOR
Suite 330
36100 Euclid Avenue
Willoughby, Ohio 44094
Telephone: (216) 951-2303
Attorney for Respondent

ROBERT J. KONDRAT, PRO SE
29121 Chardon Road
Willoughby Hills, Ohio 44092
Petitioner

SUPREME COURT OF THE UNITED STATES

October Term 1980

No. 79-1710

ROBERT J. KONDRAT

Petitioner

vs.

BARRY M. BYRON

Respondent

APPENDIX A

TABLE O CONTENTS

CASE NO. 77-CIV-0917, COURT OF COMMON PLEAS FOR LAKE COUNTY, OHIO:

Complaint (filed December 15, 1977 . . . . . A1

Supplementary Brief (filed April 24, 1978) . . . A5

Answer of Barry M. Byron (filed June 7, 1978). . A11

Answer to Answer (filed June 19, 1978) A14

Supplementary Brief (filed July 24, 1978). . . . A15

Judgment Entry (filed January 10, 1979). A18

CASE NO. 77-CIV-0918, COURT OF COMMON PLEAS FOR LAKE COUNTY, OHIO:

Complaint (filed December 15, 1977). A19

Judgment Entry (filed May 26, 1978). A27

Journal Entry of Court of Appeals for Lake County, Ohio, dismissing for want of jurisdiction plaintiff's appeal of Judgment of Court of Common Pleas entered May 26, 1978 (filed Sept. 15, 1978) A28

Letter from Plaintiff to Clerk of Common Pleas Court for Lake County Ohio (received November 29, 1978). A30

CASE NO. 78-CIV-0253, COURT OF COMMON PLEAS FOR LAKE COUNTY, OHIO:

Complaint (filed June 7, 1978) A32

Judgment Entry (filed March 30, 1979). A37

CASE NO. 78-CIV-0409, COURT OF COMMON PLEAS FOR LAKE COUNTY, OHIO:

Complaint (filed June 7, 1978) A38

Answer (filed July 18, 1978) A41

Reply to Answer (filed July 24, 1978). A42

Decision (filed May 15, 1979). A43

CASE NO. 79-CIV-0087, COURT OF COMMON PLEAS FOR LAKE COUNTY, OHIO:

Complaint (filed January 29, 1979) A44

CASE NO. C77-1158, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, JoAnne Macko, et. al. v. Barry Byron, et. al.:

Memorandum (filed April 9, 1979). A48

Order (filed April 9, 1979) A56

ARTICLE, CLEVELAND PRESS, MAY 7, 1979, Page 24 . . . A57

A1

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, Ohio 44092

Plaintiff

- vs -

PAUL MITROVICH
Shoregate Office Building - Suite 200
Wickliffe, Ohio 44092

STEPHEN JOHN FUTTERER
47 North Park Place
Painesville, Ohio 44077

BARRY BYRON
Willoughby Hills City Hall
35405 Chardon Road
Willoughby Hills, Ohio 44094

JOHN DOE NUMBERS 1 - 5
(Exact names and addresses Unknown)
c/o 47 North Park Place
Painesville, Ohio 44077

JOHN DOE NUMBERS 6 - 10
(Exact names and addresses Unknown)
c/o Willoughby Hills City Hall
35405 Chardon Road
Willoughby Hills, Ohio 44094

Defendants

CASE NO. 77B000917

JUDGE

COMPLAINT WITH JURY DEMAND ENDORSED

Now comes Plaintiff and, for his Complaint, states and avers as follows:

COUNT I

1. At all times material herein prior to January 1, 1977, Defendant, PAUL MITROVICH, was the Prosecuting Attorney of Lake County, Ohio. At all times material herein after December 31, 1976, JOHN SHOOP was, and he presently is, the Prosecuting Attorney of Lake County, Ohio.

2. At all times material herein, Defendant, STEPHEN J. FUTTERER, was an assistant Prosecuting Attorney of Lake County, Ohio and an agent for Defendant, PAUL MITROVICH and JOHN SHOOP respectively and Defendant, BARRY BYRON, was, and

I hereby certify that the foregoing is a true copy of ...
filed on ____, in ... of Lake Co ...
Court Witness my ... and seal of ... Court
this ____ day ... 19__
Edwin S. Roet, ...
By: ____ Deputy

he presently is, Law Director for the City of Willoughby Hills, Ohio.

3. The enumerated JOHN DOE Defendants, whose exact identities and address are unknown to Plaintiff as of this date, are persons or groups of persons who, acting jointly or severally in 1976 and/or 1977, did make statements to and/or did provide documents, exhibits, reports, and other materials to the Lake County Prosecuting Attorney and/or his agents and assistants for the purpose of securing a warrant for the arrest of Plaintiff and for the purpose of having criminal charges brought against Plaintiff in Lake County, Ohio. Said JOHN DOE Defendants acted maliciously, without probable cause, and for wrongful purposes in these undertakings.

4. Acting together and in concert during September, 1976 and thereafter, all of the Defendants, and each of them, caused Defendant, PAUL MITROVICH, himself or through his agent, Defendant, STEPHEN J. PETERS, to go, on or about December 15, 1976, before the Clerk of the Lake County Common Pleas Court and to charge Plaintiff in said court and before said Clerk with having committed four (4) counts of the crime of perjury in violation of Ohio Revised Code Section 2921.11 and four (4) counts of the crime of prohibitions against petitions in violation of Ohio Revised Code Section 3599.16. Said Defendants, and each of them, did procure and did cause a warrant of arrest to be issued by said Clerk in the name of Plaintiff. All of the actions set forth above undertaken by Defendants herein and all procedures attendant thereto were undertaken by the Defendants, and each of them, maliciously, without probable cause, and for wrongful purposes.

5. Thereafter, on or about December 22, 1976, Plaintiff was arrested under the aforedescribed warrant of arrest and was taken from his home and neighborhood in full view of his neighbors and friends, to the Lake County Jail, where he was booked, photographed, fingerprinted and finally incarcerated on the felon range of said jail for a period of at least seven (7) days. Thereafter, after having been subjected to increasingly more serious indignities, Plaintiff was released

on a personal recognizance bond, pending proceedings to be held before Judge John F. Clair, Jr..

6. On July 26, 1977, after two (2) days of public hearings and after the State of Ohio, by and through Defendant, STEPHEN J. FUTTERER, had completed the presentation of its case, Judge Clair directed a verdict in favor of Plaintiff herein and the matter, styled as Case No. 76CR473 in the Lake County Court of Common Pleas was fully dismissed.

7. The facts and circumstances surrounding Plaintiff's indictment, arrest, and incarceration were widely publicized in the newspapers, and other media, serving the communities wherein Plaintiff works and lives for a period of time in excess of six (6) months, which publicized reports caused Plaintiff extreme emotional and mental anguish and severe pain, injuring him, his standing, and his reputation in the community generally and particularly among his friends and neighbors, all of which was a direct result of the actions taken by the Defendants, and each of them, in causing the false and wrongful arrest and prosecution of Plaintiff.

8. By reason and as a direct result of the false and wrongful arrest and prosecution of Plaintiff by the Defendants, and each of them, as alleged herein, Plaintiff was injured and impaired in his credit, good name, and reputation; was prevented from tending to his work and other daily activities, particularly during the period of incarceration and of proceedings in Court; was made to endure and to suffer great emotional and bodily distress and anguish; and was compelled to expend money and incur expenses for counsel fees and other expenses directly and indirectly related to the facts and circumstances hereinbefore set forth, all to his damage in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, jointly and severally, for compensatory damages in the amount of $250,000.00, for punitive damages in the sum of $500,000.00, for reasonable attorneys fees

incurred in connection with this lawsuit and the underlying criminal action, and all costs, together with interest thereon from the date of judgment at the maximum amount allowable by law.

HERBERT L. BRAVERMAN
Attorney for Robert J. Kondrat, Plaintiff
Three Commerce Park Square - #715
Cleveland, Ohio 44122
464-7900

JURY DEMAND

Plaintiff demands a trial by jury of all issues herein.

HERBERT L. BRAVERMAN
Attorney for Plaintiff, Robert J. Kondrat

A5

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, Ohio 44092

Plaintiff

- vs -

PAUL MITROVICH
Shoregate Office Building - Suite 200
Willowick, Ohio 44094

STEPHEN J. FUTCHER
47 North Park Place
Painesville, Ohio 44077

PERRY PIKE
Willoughby Hills City Hall
35405 Chardon Road
Willoughby Hills, Ohio 44094

JOHN DOE NUMBER 1 - 5 [illegible]

[illegible]

JOHN DOE NUMBER 6 - 10
(Exact names and addresses Unknown)

Defendants

CASE NO. 77CIV0917

JUDGE CLAIR JR.

SUMMARY BRIEF

I hereby certify that the foregoing is a true copy of [illegible]
[illegible] Co. Common [illegible]
In Witness my [illegible] and Seal of [illegible] Court
[illegible] this [illegible] day [illegible]
Tom S. Kiel, Clerk of Courts
By: _____ Deputy Clerk

Plaintiff alleges that the Defendants, amended on the cover page, were members on a petition certification group in which Plaintiff's petitions were tampered with in violation of ORC Section 3501.38 (B). Appended hereto and marked as EXHIBIT A (frontispiece and pages 252 and 253) is in part deposition of Marilyn Monzula in Case No. 76-1068 in The Supreme Court of The State of Ohio.

Attention is directed to lines 24 and 25 of page 252, and, to lines 1 thru 24 of page 253, in which, the amended Defendants are named by Monzula deposition.

To best of Plaintiff's knowledge, the petitions themselves are in the possession of the City of Willoughby Hills. Plaintiff avs that the Court has the Law Director of said City produce the petitions and deposition taken of Plaintiff by Larry H. Lyon.

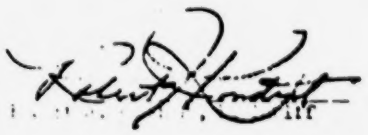
The pleadings of the complaint [illegible] repeated herein. Attention is directed to the Judicial [illegible] 3 of the original complaint.

[illegible] submitted

[illegible], Plaintiff

CERTIFICATE OF SERVICE

A copy of the foregoing Brief was served upon Ms. Krainc, 3010 Marcy Blvd., Willoughby Hills, Ohio 44092; Ms. Wallace, 30280 Eddy Road, Willoughby Hills, Ohio 44092; Ms. DeFrank, 2824 Orchard Drive, Willoughby Hills, Ohio 44092; Ms. O'Ryan, 35400 Huron Road, Willoughby Hills, Ohio 44094; Ms. Moore-head, 30151 Eddy Road, Willoughby Hills, Ohio 44092; Paul Mitrovich, Shoregate Office Building, Suite 200, Willoughby, Ohio 44094; Stephen J. Futterer, 47 North Park Place, Painesville, Ohio 44077; Barry Byron, Willoughby Hills City Hall, 35405 Chardon Road, Willoughby Hills, Ohio 44094; Charles E. Coulson, 47 North Park Place, Painesville, Ohio 44077; and George [illegible]. Bedell, 420 Lakeshore Trust Building, Painesville, Ohio 44077, by mailing to them copies thereof by regular U.S. Mail, postage prepaid, on this 24 day of April, 1985.



Attorney for Appellant

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF OHIO

---oOo---

STATE OF OHIO, ex rel, JOANNE MACKO, et al.,	)	
Plaintiffs,	)	
-vs-	)	No. 76-1068
MARILYN MONZULA, Clerk of Council for Willoughby Hills, Ohio,	)	
Defendants.	)	

---oOo---

Deposition of MARILYN MONZULA, one of the Defendants herein, taken by the Plaintiff as if under cross examination before Benjamin F. Watkins, Jr., a Notary Public within and for the State of Ohio, at Willoughby Hills City Hall, 35405 Charden Road, Willoughby Hills, Ohio, commencing at 9:00 o'clock a.m., Tuesday, October 5th, 1976, pursuant to notice.

---oOo---

Cefaratti & Remillo
Shorthand Reporters
[illegible]
Cleveland, Ohio 44114
216 687-1161

EXHIBIT A

Q Are you talking about in one instance or in any number of instances?

A I'm referring first of all to the first set of part petitions that were submitted and --

Q Well, who made notations on that first set besides yourself?

A We would mostly duplicate sets initially on one. I'm not sure who put the other set on there. I don't know who may have marked it also.

Q Well, you say you are not sure which of the councilmen it was --

A It was not a councilman. No councilmen put anything on it.

Q Was it the mayor?

A No.

Q Was it Mrs. Anspach?

A No.

Q Was it Mr. Byron?

A No.

Q Well, when you say you are confused, exactly what people does your confusion rest among?

A I had Mrs. Krajncic and Mrs. Wallace, a friend of mine.

EXHIBIT A

Q Mrs. Kraincic and Mrs. Wallace?

A And Mrs. DeFrank.

Q Any others?

A Mrs. O'Ryan.

Q Anyone else?

A Mrs. Moorehead.

Q Mrs. Moorehead. Anyone else?

A Not that I recall.

Q Well, there is something exceptionally familiar about those names, Mrs. Monzula. Mrs. Kraincic, the wife of Councilman Kraincic; Mrs. Moorehead, the wife of Councilman Moorehead; Mrs. DeFrank, the wife of Councilman DeFrank, and Mrs. O'Ryan, the wife of Councilman O'Ryan. And Mrs. Wallace has yet to be elected.

A She's a friend of mine.

Q Who is her husband? Does she have a husband?

A Yes, she has a husband.

Q What does he do?

A He's the building inspector.

Q For the City of Willoughby Hills?

A That's correct and has been a personal friend of mine for many, many years.

Q Now, are those all the people who put

1978 JUN -7 PM 3:22
MELVIN E. REED
CLERK

IN THE COURT OF COMMON PLEAS

DOCKETED

LAKE COUNTY, OHIO

ROBERT J. KONDRAT Plaintiff -vs- PAUL MITROVICH, et al Defendants	CASE NO. 77 CIV 0917 JUDGE J. WARREN BETTIS A N S W E R

Now comes the defendant, Barry M. Byron, Law Director of the City of Willoughby Hills, for his answer to plaintiff's complaint, states as follows:

First Defense

1. Says that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. Admits that he was, and is presently is, Law Director of the City of Willoughby Hills, Ohio, and says that he is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 2 of plaintiff's Complaint.

3. Says he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Denies each and every allegation contained in paragraph 4 of plaintiff's Complaint.

5. Says he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph [illegible] of the Complaint.

I hereby certify that the foregoing is a true copy of [illegible]
filed on [illegible] of Lake Co. Common Pleas
[illegible] of said Court
[illegible]; 19[illegible].
Melvin S. Reed, [illegible]
By [illegible] Deputy Clerk

6. Says he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of plaintiff's Complaint.

7. Denies each and every allegation contained in paragraph 7 of plaintiff's Complaint.

8. Denies each and every allegation contained in paragraph 8 of plaintiff's Complaint.

9. Denies each and every other allegation contained in plaintiff's Complaint not heretofore specifically admitted.

Second Defense

The Complaint fails to state a claim against this answering defendant upon which relief can be granted.

Third Defense

This answering defendant had probable cause to take what ever action he took.

Fourth Defense

This action is barred by the doctrine of prosecutorial immunity.

George W. F. Harkell
Baker, Dyson and Hackenberg
1400 Lakeshore Trust Building
Painesville, Ohio 44077
354-4104 951-2303

SERVICE

A copy of the foregoing Answer was served upon Mr. Robert J. Kondrat, 29121 Chardon Road, Willoughby Hills, Ohio 44092; Mr. Paul H. Mitrovich, Shoregate Office Building, Suite 200, Willowick, Ohio 44094; and Mr. Charles P. Conlson, 47 North Park Place, Painesville, Ohio 44077, by ordinary mail to them by

regular United States mail, first-class postage prepaid, on this 7th day of June, 1978.

George B. F. Haskell
Baker, Byron and Mackenberg
Attorneys for Defendant, Byron

FILED
1978 JUN 19 AM 9:47
MELVIN S. REED
LAKE CO., CLERK OF COURTS

DOCKETED

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT

Plaintiff

v.

PAUL MITROVICH, et al

Defendants

CASE NO. 77 CIV 0917

JUDGE J. WARREN BETTIS

ANSWER TO AN ANSWER

Now comes the Plaintiff, Robert J. Konirat, with his Answer to the Defendant Barry M. Byron's Answer. Plaintiff's Answer is the same as that once echoed by a famous General in the battle of Bastogne, and that is "NUTS".

Plaintiff is not interested in Defendant's opinion. A jury will decide Defendant's guilt or innocence.

Respectfully Submitted,

ROBERT J. KONDRAT, Plaintiff

PROOF OF SERVICE

A copy of the foregoing ANSWER TO AN ANSWER was mailed by regular United States mail, postage prepaid, to Barry M. Byron, 420 Lakeshore Trust Building, Painesville, Ohio 44070, on this 16 day of June, 1978.

I hereby certify that the foregoing is a true copy of ____
on file in this office in the Court of Common
Pleas within my custody and control
____ day of
S. Reed, Clerk
_____ Deputy

DOCKETED

19 JUL 24 PM 1:05

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT Plaintiff vs. PAUL MITHOVICH STEPHEN J. FUTTERER BARRY BYRON MS. KRAINCIC MS. WALLACE MS. DeMARK MS. O'BRIAN MS. MOORHEAD JOHN DOE NO. 6 Amended to Read as Follows MICHAEL T. BILLSON 380 E. Euclid Avenue Willoughby, Ohio 44094 JOHN DOE NUMBERS 7-10 (Exact names and addresses Unknown) Defendants	CASE NO. 77 CIV 0917 SUPPLEMENTARY BRIEF

I hereby certify that the foregoing is a true copy of [illegible]
filed on [illegible], in the Court of Common Pleas
In Witness my hand and seal this [illegible] day of [illegible]
Lee J. Weed, Clerk
By: [illegible] Deputy

Plaintiff alleges that the Defendant, acted in concert with others to have criminal charges brought against Plaintiff in Lake County, Ohio. Plaintiff alleges that the Defendant acted maliciously without cause, and did so for wrongful purposes. Plaintiff alleges that the Defendant did cause warrants of arrests to be issued in the name of the Plaintiff, which thereafter on or about December [illegible], 1976, caused Plaintiff to be arrested, taken to Lake County Jail, where Plaintiff was booked, photographed, fingerprinted and finally incarcerated in Lake County Jail for a period of seven days, or thereabouts, and after which on July 25, 1977, Plaintiff was brought to trial, and after the State of Ohio had completed the presentation of its case, the court directed a verdict in favor of Plaintiff, Case No. 76 CR [illegible] in the Lake County Court of Common Pleas, was fully dismissed.

Plaintiff alleges that the Defendant, whose signature appears on eight secret indictments returned against Plaintiff, entered into a conspiracy with the Lake County Prosecutor, Paul Mitrovich, to have Defendant indicted and subsequently brought to trial. Plaintiff alleges the Defendant acted without proper and sufficient evidence to warrant indictments against Plaintiff. Plaintiff alleges that the Defendant gave the Prosecutor a rubber-stamp approval to proceed on a course of injustice against Plaintiff. Plaintiff alleges that Defendant is a person that was schooled in and knew the law, reportedly an attorney with an active practice in all areas of law, prosecutor for cities in Lake County, and assistant law director for a city in Lake County, candidate for Judgeship, and that he possessed superior intelligence to know right from wrong. Plaintiff alleges that the Defendant used his superior intelligence to assist others in [illegible] criminal action

against Defendant. Furthermore Plaintiff alleges that the Defendant abused the Grand Jury process when Defendant, as Grand Jury Foreman, acted in the interests of the conspirators to satisfy their cause. As quoted by a Lake County Judge, in the Court's charge to a recent Grand Jury, "No one may accuse another of a crime in the form of a request to the grand jury, to avoid the law of libel and slander."

The pleadings of the captioned Case No. will not be repeated herein. Attention is directed to the JOHN DOE Defendants' paragraph No. 3 of the original complaint. Plaintiff's relief is as stated in the original complaint.

Respectfully submitted

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, Ohio 44092

PROOF OF SERVICE

A copy of the foregoing SUPPLEMENTARY BRIEF was mailed by regular United States mail, first class, postage prepaid, to Michael T. Billson, of Clair, Wiles, Richards & Bates, 38052 Euclid Avenue, Willoughby, Ohio 44094, on this 24 day of July, 1978.

Robert J. Kondrat

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

1979 JAN 10 AM 9:12

DOCKETED

ROBERT J. KONDRAT	)	
PLAINTIFF	)	CASE NO. 77 CIV 0917
VS	)	JUDGMENT ENTRY
PAUL MITROVICH, ET AL	)	
DEFENDANTS	)	

This matter comes on for decision after hearing Defendants Paul M. Mitrovich and Stephen J. Rutterer Motion for Summary Judgment.

It appearing to the Court that at the time of the conduct complained of, Paul M. Mitrovich was the Prosecuting Attorney for Lake County, Ohio, and that Stephen John Futterer was Assistant County Prosecutor for Lake County, Ohio, Defendants' Motion for Summary Judgment is determined under the doctrine of Prosecutorial Immunity set forth in Imbler vs. Pachtman, 424 U.S. 409, (1976).

The Court further finds that there is no just reason for delay of this judgment.

Costs taxed against Plaintiff.

J. WARREN BETTIS, JUDGE

DATED: January 8, 1979

455

I hereby certify that the foregoing is a true copy of ___
as the same ___, in ___ of Lake County
In Witness my ___ and Seal of ___
this ___ day ___
John S. Reed, Clerk
By: _____ Dep

A19

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29127 Chardon Road
Willoughby Hills, Ohio 44092

Plaintiff

- vs -

BARRY M. BYRON, Esq.
420 Lakeshore Trust Building
State and Main Streets
Painesville, Ohio 44077

MELVIN G. SCHAEFER
c/o Willoughby Hills City Hall
35405 Chardon Road
Willoughby Hills, Ohio 44094

SANDY J. DEFRANK
2624 Orchard Drive
Willoughby Hills, Ohio 44094

ROBERT MORLHEAD
30151 Eddy Road
Willoughby Hills, Ohio 44094

MORTON O'RYAN
35400 Hanna Road
Willoughby Hills, Ohio 44094

LAWRENCE O'DONNELL
2941 Rockefeller Road
Willoughby Hills, Ohio 44094

GEORGE KRAINCIC
3010 Marcum Road
Willoughby Hills, Ohio 44094

MARILYN MONZULA
2767 Oak Street
Willoughby Hills, Ohio 44094

PAUL MITROVICH
Shoregate Office Building - Suite 200
Wickliffe, Ohio 44092

Defendants

CASE NO. 78-H-0918

THE HONORABLE

COMPLAINT WITH JURY DEMAND ENDORSED

* * *

Now comes Plaintiff, ROBERT J. KONDRAT, and for his Complaint states, alleges and avers as follows:

I hereby certify that the foregoing is a true copy of Complaint filed on _____, in _____ of Lake Co. Common Pleas Court. Witness my hand and seal of said Court this _____ day of _____, 19__
Melvin S. Reed, Clerk of Courts
by: _____ Deputy Clerk

COUNT I

1. At all times material herein, Plaintiff was a circulator and/or signer of recall petitions being circulated and signed by the citizens of Willoughby Hills, Ohio, which petitions sought the removal from office of Defendant Schaefer (Mayor) and Defendants Defrank, Moorehead, O'Ryan, O'Donnell and Kraincic (councilmen). At all times material herein, Defendant Byron was the Law Director for the City of Willoughby Hills; Defendant Monzula was the Clerk of Council for the City of Willoughby Hills; and Defendant Mitrovich was the Prosecuting Attorney for Lake County, Ohio.

2. On or about August 19, 1976, Defendant Schaefer, maliciously and with intent to injure, ridicule and defame Plaintiff, caused to be published in a newspaper known as The Cleveland Plain Dealer the following false material and statements concerning Plaintiff and a group of persons with which Plaintiff was known to associate:

> "Willoughby Hills Mayor, Melvin G. Schaefer, lashed out yesterday at residents circulating recall petitions against him, threatening to sue them over "false charges."
>
> "Schaefer, who took office January 1, said "A small, self-appointed committee of losers" is collecting the signatures to have a vote on ousting him and five councilmen."
>
> "He charged, "They are primarily disgruntled backers of the candidates who lost by large margins in the mayoral and councilmanic elections and are seeking a re-hash of last year's elections."
> ***
>
> "The statements are derogatory against me everyone signing those petitions is endorsing those charges. All six are false and those involved can be answerable in a Court of law."

3. Thereafter, Defendant Schaefer continued to characterize Plaintiff and the other circulators and/or signers of said recall petitions as "losers," "sore losers," "mislead citizens," and as persons who were perpetrating fraud and deception upon the citizens of Willoughby Hills. Defendant Schaefer publically accused Plaintiff and other persons circulating and signing said recall petitions under "false pretenses" with "misrepresentation" to the public and

as part of a "witch hunt."

4. The materials so published and the statements so made concerning Plaintiff and others are defamatory and false.

5. At the time of such publication and such statements, Defendant Schaefer knew or could, within the exercise of reasonable care, have known or ascertained that said statements and material was untrue. Furthermore, said Defendant made such statements and published such material willfully and with actual malice toward Plaintiff and others, with an intent to embarrass, ridicule and defame them.

6. By reason of such publication and such subsequent statements, Plaintiff was injured in his reputation, his business, and his credit and was made to suffer great pain, distress and mental anguish to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

COUNT II

7. Plaintiff incorporates by reference all of the allegations contained in Paragraphs 1 through 6 of Count I of this Complaint as if fully rewritten herein at length.

8. On or about September 3, 1976, and thereafter, Defendants SCHAEFER, DEFRANK, MOORHEAD, O'BRYAN, O'DONNELL, KRAINCIC and MONZULA did maliciously and with intent to ridicule, defame and injure Plaintiff and others cause to be prepared and to be circulated publicly by United States Mail to the citizens of Willoughby Hills, Ohio, a publication concerning Plaintiff and others, which included the following statements:

> "The mayor and five councilmen stated that the petitions had been circulated with arguments that the recall attempt was merely a vote of confidence for these six officials. They stated that the circulators of the petitions have misled some residents of the city and have obtained signatures under false pretenses. The mayor and five councilmen added that residents who wish to do so may withdraw their names from these petitions by calling the Clerk of Council at Willoughby Hills City Hall, 946-1234, to make necessary arrangements for the removal of their names."

9. With this publication and in subsequent statements made to the news media and openly in council meetings, said Defendants made false and defamatory

statements to the effect that Plaintiff and others had committed an indictable offense involving moral turpitude, which subjects Plaintiff, as an offender, to infamous punishment.

10. Such publication and subsequent statements concerning Plaintiff are false and defamatory. At the time of such publication and statements, said Defendants knew or could, with the exercise of reasonable care, have known or ascertained that the content thereof was untrue and injurious.

11. By reason of such publication and statements, Plaintiff was injured in his reputation, business and credit and suffered great pain, emotional distress and mental anguish to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

COUNT III

12. Plaintiff incorporates by reference herein all the allegations contained in Paragraphs 1 through 11 of Counts I and II of the Complaint as if fully rewritten herein at length.

13. On or about September 15, 1976, Defendant Byron, maliciously and with intent to ridicule, injure and defame Plaintiff caused to be published by letter certain false statements accusing Plaintiff, and others, of committing an indictable offense involving moral turpitude which subjects Plaintiff to infamous punishment in accordance with the laws of this State. A copy of said letter is attached hereto as Exhibit A and incorporated herein as if fully rewritten at length.

14. On or about September 23, 1976, Defendant, Byron, in concert with the other Defendants named herein except Defendant Mitrovich, maliciously and with intent to injure, ridicule and defame Plaintiff and others read in an open meeting of the City Council of Willoughby Hills the letter attached hereto as Exhibit A.

15. The statements in said letter so published and the words so spoken at said meeting of the City Council were false and defamatory and at the time said statements were made and said letter published, the Defendants except Defendant Mitrovich, and each of them, knew or could, with the exercise of reasonable care,

have known or ascertained that the content thereof was untrue.

16. Said statements and said letter were willfully published by Defendants and each of them, with actual malice toward Plaintiff.

17. By reason of such letter and such statements, Plaintiff was injured in his business, credit and reputation and was made to endure and suffer great pain, emotional distress and mental anguish, all to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

COUNT IV

18. Plaintiff incorporates herein by reference Paragraphs 1 through 17 in Counts I through III of this Complaint as if fully rewritten here at length.

19. On or about December 18, 1976, Defendant Mitrovich, maliciously and with the intent to injure, ridicule and defame Plaintiff caused to be circulated publicly in the newspaper known as The Telegraph a statement to the affect that Plaintiff had committed an indictable offense involving moral turpitude which subjected Plaintiff to infamous punishment. Defendant Mitrovich, while Prosecuting Attorney for Lake County and while criminal charges were pending against Plaintiff in connection with his activities as a recall petition solicitor, stated in connection with Plaintiff:

"This is no minor offense. This is a deliberate kind of thing."

20. The matter so published concerning Plaintiff is false and defamatory. At the time of such publication, said Defendant knew or could, with the exercise of reasonable care, have known or ascertained that the matter was untrue and injurious to Plaintiff.

21. By reason of such publication, particularly by reason of the office held by said Defendant at the time of such publication, Plaintiff was injured in his business, credit and reputation and was made to endure and suffer great pain, emotional distress and mental anguish to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

WHEREFORE, with respect to Counts I through III of this Complaint, Plaintiff demands judgment against Defendants Byron, Schaefer, Defrank, Moorehead, O'Ryan, O'Donnell, Kraincic, and Monzula, jointly and severally, in the amount of $450,000.00 for compensatory damages, in the amount of $500,000.00 for punitive damages, along with interest thereon at the maximum rate allowable under law, reasonable attorney fees, and the costs of this action. In addition, with respect to Count IV of the Complaint, Plaintiff demands judgment against Defendant Nitrovin, in the amount of $150,000.00 in compensatory damages, in the amount of $[illegible].00 for punitive damages, along with interest thereon at the maximum rate allowable under law, reasonable attorney fees, and the costs of this action.

[illegible]
Attorney for Plaintiff, Robert J. Kondr
[illegible] Square - #715
[illegible]

[illegible]

Plaintiff demands a jury trial on all issues.

[illegible]
Attorney for Plaintiff, Robert J. Kondr

September 15, 1976

Honorable Ted W. Brown
Ohio Secretary of State
State House
Columbus, Ohio 43215

Re: City of Willoughby Hills, Removal Recall Petitions

Attention: Elections Office

Dear Mr. Brown:

On September 3, 1976 petitions demanding the "immediate recall and removal" of the Mayor and five (of seven) councilmen of the City of Willoughby Hills, Ohio were filed with the Clerk of Council. For a variety of reasons, these petitions have been determined to be invalid by the Clerk pursuant to the Willoughby Hills City Charter.

In connection with the conduct of procedures necessary to determine the validity of the subject petitions, City officials have uncovered information leading to the following preliminary conclusions, to-wit:

1) Systematic and deliberate misrepresentations were made to prospective signers of the petitions concerning their content and legal effect in violation of Section 3599.14 of the Revised Code of Ohio.

2) Misrepresentations of fact were made in attempting, sometimes successfully, to influence citizens to sign these petitions. These misrepresentations were to the effect that an "area shopping center" and a large discount store were proposed and authorized by the Mayor and City Council for future construction and operation in Willoughby Hills. There are no such proposals. City officials have evidence that residents were persuaded to sign these petitions because of these misrepresentations. These misrepresentations of fact were widespread and apparently orchestrated by prior design.

These facts tend to show a violation of Section 3599.14 of the Revised Code and suggest the possibility of violations of those sections of Chapter 29 (the Ohio Criminal Code) relating to criminal complicity.

3) Signers were permitted by the circulators of the petitions to sign more than once in violation of Section 3599.13 of the Ohio Revised Code.

4) Persons unqualified to sign were knowingly permitted by the circulators of the petitions to sign their names in violation of Section 3599.13 of the Ohio Revised Code.

5) A person was permitted by a circulator to sign a name other than her own in violation of Section 3599.13 of the Ohio Revised Code; the circulator who obtained the forged signature then made a false affidavit concerning the forged signature in violation of Section 3599.14 of the Ohio Revised Code.

6) Part petition papers were filed with the Council Clerk which contained a forgery in at least one instance thus far discovered in violation of Section 3599.14 of the Ohio Revised Code.

Because these violations appear to be widespread and systematic it is my judgment that a thorough investigation of these apparent irregularities is necessary.

Please consider this letter as the request by my office that you, as chief election officer of the state, undertake an investigation of these irregularities pursuant to the provisions of Section 3501.05 (M) of the Revised Code. I appreciate that this is a busy time of year for your office, however, the public interest would best be served by prompt investigation and, if warranted, prosecution of all guilty parties involved. You are assured of the full cooperation of the Willoughby Hills City Administration with your representatives in this investigation.

Pending final determination of this matter by prosecuting authorities, I have instructed the Clerk to impound these petitions and to permit no inspection of them.

The favor of an early reply is respectfully requested.

Very truly yours,

Barry M. Byron
Law Director
City of Willoughby Hills, Ohio

BMB/
cc: Board of Elections of Lake County

EXHIBIT A, Page 2

FILED
COURT OF APPEALS
JUN 2 1978
MELVIN S. REED
CLERK OF COURT
LAKE COUNTY, OHIO

FILED
1978 MAY 26 AM 9 11

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	
	)	
PLAINTIFF	)	CASE NO. 77 CIV 0918
	)	
VS	)	
	)	
BARRY M. BYRON, ET AL	)	JUDGMENT ENTRY
	)	
DEFENDANTS	)	

Plaintiff granted thirty (30) days to amend counts 1 and 2 of complaint to indicate time, place and substance of alleged continuing defamatory actions. If said counts are not amended within 30 days, defendants' motion to dismiss will be granted; motion to dismiss defendant Byron granted; motion to dismiss defendant Mitrovich denied.

See Opinion.

J. MARTIN BUTTS, JUDGE

DATED: May 23, 1978

FILED
COURT OF APPEALS
SEP 15 1978
MELVIN S. REED
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO)
SS
LAKE COUNTY)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

ROBERT J. KONDRAT)
PLAINTIFF-APPELLANT)
VS)
BARRY M. BYRON, ET AL)
DEFENDANT-APPELLEES)

JOURNAL ENTRY

CASE NO. 6-292

A notice of appeal has been filed in this case appealing a judgment entry of the lower court which was journalized on the 26th day of May, 1978.

In the action in the lower court there were eight party defendants. The judgment of the lower court, entered on the 26th day of May, disposed of the case by dismissal as to fewer than all of the parties. Under such circumstances, this entry of the lower court is not a final order which may be the subject of appeal.

Rule 54 of the Ohio Rules of Civil Procedure provides that a court may enter final judgment as to one or more but fewer than all parties only upon an express determination that there is no just reason for delay.

Appeals may be taken only from those orders in the lower court which are final orders and completely dispose of pending action or from orders entered in a summary proceeding which substantially affect the rights of one of the parties.

Accordingly, this notice of appeal filed on June 2, 1978 is dismissed.

JUDGE JOSEPH E. O'NEILL
(SEVENTH APPELLATE DISTRICT)

JUDGE JOSEPH DONOFRIO
(SEVENTH APPELLATE DISTRICT)

JUDGE DAVID DOWD
(FIFTH APPELLATE DISTRICT)

SITTING BY ASSIGNMENT IN ELEVENTH APPELLATE DISTRICT.

I hereby certify that the foregoing is a true copy of _____
filed on _____, in _____ Co. Common
Court. Witness my
this _____ day of _____
Melvin S. Reed, Clerk
By: _____ Deputy C.

November 27, 1978

Mr. Melvin S. Reed
Clerk of Common Pleas Court
Lake County Court House
Painesville, Ohio 44077

Re: Your Note Dated November 15, 1978
Case No. CA 6-292

Dear Mr. Reed:

Your correspondence regarding the invoice of referenced case was received. The prompt attention given this matter is appreciated.

The itemized statement of charges I'm sure is correct and is not in question. The question here is the validity of the presentation of this statement.

On September 15, 1978, at the Lake County Court House, a hearing scheduled by the Eleventh District Court was suddenly aborted by Judge Dowd. The reason given was that the Court did not have jurisdiction because the Appellee had not been rendered a final decision by the lower Court. This was my understanding of the decision at the time.

As you may or may not know, this case was in the Appellate Court for some fifteen weeks. The Court gave no indication during all this time that the matter before it was not in its jurisdiction or that the case would not be heard. Yet, it went through the motions of the paperwork and to even schedule a hearing on something it knew it could not get involved in. Then it waited until the last moment to make this fact known. Isn't it strange for a Court to function much like a ship without a rudder? Or was this deliberately staged?

I question this Court, or for that matter any Court that enters into a situation where it has no jurisdiction, yet has authority to render a decision on a nonentity. What rule permits these Courts the dictatorial power to arbitrarily transgress at will? Rule 24, which you refer to is no basis to permit this power.

Reed

Attached to this letter is check No. [illegible] in the amount of Fifteen Dollars ($15.00). If the Court feels in all honesty that it is entitled to the charges levied, then cash it. If the Court feels that there may be some question as to the soundness of these charges, then feel free to return the check. In the event that the Court decides on the former, then this letter is to be made a matter of record and it is to be noted that this payment is made in protest because of the Court's misdirection. Payment is not to be construed as an act of obeisance by the writer. If anything, the writer considers this a Court's ploy and a rip off.

Sincerely,

Robert J. Kondrat
29121 Chardon Road
Willoughby Hills, OH 44092

... hereby certify that the foregoing is a true copy of, ...
... on ..., in ... of Lake Co Common Pleas
... Witness my ... and seal of said Court
... day ...; 19...
... Reed, Clerk of Courts
by: ..., Deputy Clerk

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

78-CIV-0253

ROBERT J. KONDRAT

Plaintiff-Taxpayer

vs.

COMPLAINT

I hereby certify that the foregoing is a true copy of
filed on , in of Lake Co. Common P.
Court. Witness my and seal of said Court.
this day of ; 19
Melvin S. Reed, Clerk of Courts
By: Deputy

TAXPAYER'S COMPLAINT

Plaintiff alleges that the defendant Paul Mitrovich, while in the capacity as Lake County Prosecutor, was instrumental in obtaining secert Grand Jury indictments against four Lake County residents. Plaintiff alleges that these indictments could not have been secured without this Defendant's participation. Plaintiff alleges that the indictments, which later were to be dismissed, were uncalled for, discriminatory and were terminated at great expense to the Taxpayers.

Plaintiff alleges that the Defendant John Chocp, Lake County Prosecutor succeeding Paul Mitrovich, in neglecting to recognize his predecessor's flagrant contributed to the wanton, unwarranted waste of Taxpayer's money, when he permitted this charade to continue. Plaintiff alleges that this Defendant could have and should have stopped this expensive [illegible] which his predecessor had embarked upon.

Plaintiff alleges that the Defendant Stephen J. Futterer, Assistant Prosecuting Attorney, added fuel to the wasteful expenditure of public funds, when he went so far as to prosecute the State in a trial of one of the indicted. Plaintiff alleges that even though the Defendant was forewarned that he had no case and would surely look foolish if he proceeded any further, the Defendant nevertheless choose to ignore this sound advice, given him at no cost, and did proceed at great expense to the Taxpayers only to prove that he was wrong.

-1-

Plaintiff alleges that the Defendants exhibited an abuse of power of office, lack of judgment and incompetency in office that resulted in a total disregard for the taxpayers. As a consequence, Plaintiff alleges that the Taxpayers suffered unneedlessly through the expenditure of their tax dollars on contrived extravaganza.

Plaintiff expects the Defendants to counter this complaint with their claim "immunity by office". However, Plaintiff alleges that there can be no immunity here. Plaintiff alleges that the Defendants, in their capacity, acted as sheep herders who led the Grand Jury as a flock of sheep across the meadow to the finding they wanted. In the Defendant's cry for immunity, they may be expected to say "don't blame me, the Grand Jury returned the indictments and that we are protected and beyond the [illegible] of our positions". Yet, the Plaintiff alleges that the Defendants [illegible] ethical, moral, legal and public boards of office in their [illegible] taxpayer's money.

If the law is such so as to say that [illegible] are protected, and, that any wrong you commit, knowingly or unknowingly, the courts will stand by your side, then justice will not only be unequitable, but will have sunk into a state of derision.

-4-

For how can the same courts be expected to sit in Judgement on malpractice suits of lawyers, doctors and others when it refuses to sit in judgement on malpractice suits of public officials? These officials who are suppose to be employed for the public good, but pervert it to contrary purposes, cannot expect security from laws which they themselves break to injure the public.

In the majority opinion written by U.S. Circuit Court Judge Carl McGowan, in which the absolute-immunity doctrine available to prosecutors was not recognized, Judge McGowan stated "civil lawsuits should be available as restraints on prosecutorial excesses". Plaintiff alleges that the Defendants actions were a classic exarple of prosecutorial excess in which the Taxpayers suffered unneedlessly.

As a result of the alleged Defendant's actions, Plaintiff asks that the Defendants be required to pay for all [illegible] incurred upon the Taxpayers that stemmed from the indictments, arrests, trial and other actions of the Recall Petitioners of the City of Willowby Hills, Ohio. Plaintiff asks that the Defendants be made to share equally in reimbursing the public funds, and that costs and expenses be for past, present and any futures actions that may involve Taxpayer's monies on such ridiculous performances. Plaintiff asks that on the already expended public funds, the Defendants be required to pay interest computed at the present going rate, and that this sum be contributed to a charitable organization as may be designated by the Court.

Respectfully Submitted,

Robert J. Fondrde
Plaintiff-Taxpayer

DOCKETED

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

CASE NO. 78 CIV 0253

ROBERT J. KONDRAT)
)
PLAINTIFF)
VS) JUDGMENT ENTRY
)
PAUL H. MITROVICH, ET AL)
)
DEFENDANTS)

This matter comes on for decision on Defendants' Motion for Summary Judgment.

Motion of Defendants Paul H. Mitrovich, John E. Shoop, and Stephen J. Futterer for Summary Judgment is sustained.

Costs taxed against Plaintiff.

J. WARREN BETTIS, JUDGE

DATED: March 29, 1979

I hereby certify that the foregoing is a true copy of [illegible]
filed on [illegible], in the records of Lake Co. Common P.
Court. Witness my signature and seal of said Court,
this [illegible] day of [illegible]; 19[illegible]
Melvin S. Reed, Clerk of Courts
By: [illegible] Deputy Clerk

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29131 CHARDON ROAD
WILLOUGHBY HILLS, OHIO 44092

PLAINTIFF

VS

STEPHEN J. PUTTERER
32579 EUCLID AVENUE
WILLOUGHBY, OHIO 44094

DEFENDANT

CASE NO.

COMPLAINT

JURY TRIAL DEMANDED

I do hereby certify that the foregoing is a true copy of
filed on
Court witness my
this
William S. Reed,
By: Deputy Clerk

1. Plaintiff a resident of Willoughby Hills, Ohio, and a citizen of the United States, was exercising his Constitutional right as a petitioner in a recall movement of some Willoughby Hills city officials in 1976. As a result of this granted freedom, Plaintiff was indicted, arrested, incarcerated and brought to trial.

2. At the conclusion of the trial, which occurred July 25th, 1976, or thereabouts, and in which Plaintiff was vindicated, Plaintiff attempted to retrieve records, photographs, fingerprints and related documents in connection with the aforementioned events, of which he was entitled to.

3. The herein named Defendant instructed the Plaintiff that such documents would be given Plaintiff at the Lake County Sheriff's Department. The Defendant stated that a telephone call would be placed to said Department by Defendant authorizing release to Plaintiff of documentation requested. This conversation occurred in the Lake County Court House with witnesses present.

4. Plaintiff proceeded to the Lake County Sheriff's Department in accordance with Defendant's instructions. Upon arrival there, Plaintiff was informed by a Sheriff's Deputy that not only was there no telephone call from the Defendant, but release of documentation could only be obtained by a written notification. This occurred in the Lake County Sheriff's Department, again with witnesses present.

5. Thereafter, Plaintiff returned to the Defendant's office whereupon Defendant was informed of the Sheriff's Department policy. The Defendant expressing surprise, and being most apologetic for his seemingly unknown and misguided instructions given, agreed to furnish the necessary written communication needed to release the documentation Plaintiff was seeking. Defendant stated it would take only a few minutes to prepare, whereupon Defendant proceeded behind a door to prepare such letter. After a long wait by the Plaintiff, [illegible] re-appeared only to [illegible] that no such letter would be forthcoming. This occurred in the Lake County Prosecutor's office, again with witnesses present.

6. The actions and events of the Defendant, which occurred on July 25,

1977, or thereabouts, were then reported, the very same day, to Judge John Clair Jr.

7. Plaintiff alleges that the Defendant lied and engaged in a flim-flam operation of deception and intimidation to frustrate Plaintiff's effor' in the recovery of the documentation Plaintiff was entitled to.

8. As a result of Defendant's actions, Plaintiff was required to emat the services of legal counsel to obtain the documentation that the Defendan' could have just as easily provided. In addition, the Plaintiff has gone to additional personal expense in time and money to attempt recovery of Plain-tiff's expenditures so un-needlessly

Attached hereto and made as Exhibit A is legal counsel fees and estimated personal expenses in connection with [illegible] complaint. Personal expenses are to be adjusted upward or downward according upon required lit igation.

Defendant may be expected to counter with immunity, not liable or some other ridiculous claim. Regardless of what argument, laws or other paraphernalia is used to disclaim this complaint, Plaintiff would like to say that this burden upon Plaintiff was unasked for and that Plaintiff [illegible] whether Defendant, Lake County, the Prosecutor or others must foot this bill. Plaintiff expects restitution of money spent.

Respectfully Submitted

ROBERT J. KUNDRAT
Plaintiff

PROOF OF SERVICE

A copy of the [illegible] complaint was sent to Stephen J. Futterer, [illegible] Euclid Avenue, Willoughby, Ohio [illegible] by regular U.S. Mail, postage prepaid [illegible] 76.

1978 JUN -7 PM 12:56

MELVIN D. REED
LAKE CO., CLERK OF COURTS

Three Commerce Park Square
23200 Chagrin Boulevard
Cleveland, Ohio 44122

January 19, 1978

Mr. Robert J. Kondrat
29121 Chardon Road
Willoughby Hills, Ohio 44092

PROFESSIONAL SERVICES

Services rendered in connection with the expungement of criminal record and obtaining arrest records, photographs, fingerprint cards and related documents, including telephone conversations with client and Sheriff's office and correspondence to client and Sheriff Cunningham (.75 hours) . . . . . $ 33.75

Plaintiff's Time -- preparing and filing petition
Time computed by Patterson's publication $ 225.00

postage, stationery, copying $ 2.65

TOTAL DUE PLAINTIFF $ 261.40

NOTE : Above total due as of June 6, 1978.
Total to be adjusted as additional expenses are incurred.

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

DOCKETED

1978 JUL 10 AM 8:04

ROBERT J. KONDRAT,

Plaintiff,

v.

STEPHEN J. FUTTERER,

Defendant.

CASE NO. 78 CIV 0409

A N S W E R

Now comes the defendant Stephen J. Futterer and for his Answer to the Complaint states as follows:

1. through 8. Defendant denies the allegations found in Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted against this defendant.

SECOND AFFIRMATIVE DEFENSE

The defendant was at all times relevant hereto an Assistant County Prosecutor of the Lake County Prosecutor's office, and all of the acts and omissions alleged in the Complaint refer to defendant's conduct as a County Prosecutor. The defendant is immune from suit for civil damages.

WHEREFORE, having fully answered, defendant prays that plaintiff's Complaint be dismissed and that he may go hence without day and recover his costs herein incurred.

JAMES F. SHELLEY
Attorney for the defendant Stephen J. Futterer
630 Bulkley Building
Cleveland, Ohio 44115

OF COUNSEL: GALLAGHER, SHARP, FULTON, NORMAN AND MOLLISON

I hereby certify that the foregoing is a true copy of ...
... on ... this ...
... S. ...
BY ...

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	CASE NO. 78 CIV 0409
Plaintiff	)	
vs.	)	REPLY TO ANSWER
STEPHEN J. PUTTERER	)	
Defendant	)	

Now comes the Plaintiff in reply to Defendant's so-called Answer.

1) Defendant's denial of Plaintiff's allegations is to be expected. What else can the Defendant say? Witnesses stand ready to substantiate Plaintiff's allegations.

2) Defendant's first defense, "Failure to state a claim upon which relief can be granted," is moot. The claim is simple. The defendant is an alleged liar. The claim is simple. Plaintiff seeks to be reimbursed monetarily for damages resulting from Defendant's alleged lying. The complaint is quite clear on this.

3) Defendant's defense of immunity is more absurd. The Defendant's name on legal papers is legal nullity. All allegations in the complaint are referred to the Defendant. Therefore, whatever title Defendant may have is irrelevant. And, Defendant's claim of immunity cannot be applied to an alleged liar.

In conclusion, Plaintiff asks that the court deny Defendant's request for dismissal. Instead, Plaintiff requests that a trial be scheduled.

Respectfully submitted,

ROBERT J. KONDRAT

PROOF OF SERVICE

A copy of the foregoing Reply to Answer was sent to Gallagher, Sharp, Fulton, [illegible], Skilliter, [illegible] Building, Cleveland, Ohio 44115, [illegible] prepaid, on this 24 day of May, 1978.

COURT OF C· MMON PLEAS

COUNTY O :UYAHOGA

CLEVELAND 13. OHIO

JOHN L. MAXWELL
JUDGE

Visiting Judge
Sitting by Assignment

May 14, 1979

Decision

Richard J. Kondrat
29191 Chardon Road
Willoughby, Ohio 44092

James F. Sweeney
630 Bulkley Building
Cleveland, Ohio 44115

FILED
1979 MAY 15 AM 10:29
MELVIN S. REED
CLERK OF COURTS

DOCKETED

Re: Court of Common Pleas
Lake County, Ohio
Case No. 78 CIV 0409
Richard J. Kondrat vs.
Stephen J. Futterer

Court finds there is no genuine issue as to any material fact, and that Defendant is entitled to judgment forthwith, as a matter of law.

Plaintiff's complaint is hereby dismissed with prejudice at Plaintiff's costs.

Defendant's counsel, James F. Sweeney, shall prepare Judgment Entry accordingly.

JOHN L. MAXWELL
Visiting Judge
Sitting by Assignment

I hereby certify that the foregoing is a true copy of [illegible]
filed on [illegible], in [illegible] of Lake Co Common Pl[illegible]
Court. Witness my signature and seal of said Court
this 1 day of [illegible]; 19[illegible]
Melvin S. Reed, Clerk of Courts
By: [illegible], Deputy C[illegible]

[redacted]

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29121 CHARDON ROAD
WILLOUGHBY HILLS, OHIO 44092

JOHN L. SZABO
37281 EAGLE ROAD
WILLOUGHBY HILLS, OHIO 44094

Plaintiffs

vs.

MORTON O'RYAN
37400 HANNA ROAD
WILLOUGHBY HILLS, OHIO 44094

Defendant

79-10-0087

COMPLAINT

JURY TRIAL DEMANDED

[redacted]

COMPLAINT

1. Now comes Plaintiffs ROBERT J. KONDRAT and JOHN L. SZABO, and for their Complaint state, allege and aver that on or about February 23, 1978, the Defendant, Morton O'Ryan, a Councilman in the City of Willoughby Hills, Ohio, maliciously and with intent to injure, ridicule and defame the Plaintiffs, described the Plaintiffs in an open public council meeting as the following:

> "malcontents that by using the recall process attempted to overthrow the government of Willoughby Hills"

2. Subsequenty, on or about February 27, 1978, the Defendant's malicious statement was published in a newspaper known as the Cleveland Press. The publication of this statement was false and defamatory. Attached hereto and marked as Exhibit A is said publication.

3. The words so spoken by the Defendant, and subsequently published, were directed against the Plaintiffs and others who were circulators of petitions that sought the recall of the mayor and five councilmen of the City of Willoughby Hills, Ohio. The Defendant being one of the Recallees.

4. The Plaintiffs deny that they were rebellious against authority, revolutionaries or traitors as described in Defendant's statement. Nor did the Plaintiffs attempt to overthrow the government of Willoughby Hills as stated by the Defendant. The Plaintiffs' participation in the affairs of local government was limited to exercising their right guaranteed by the First

Amendment of the Constitution of the United States, which is, the right to petition the government for a redress of grievances The exercise of this freedom has never been considered as treasonous or overthrowing the government.

5. By reason of Defendant's false statement and such publication, Plaintiffs were injured in their business, credit and integrity, and were made to suffer great pain, emotional distress and mental anguish.

6. With respect to this complaint, each Plaintiff demands judgement against the Defendant O'Ryan in the amount of $200,000 for compensatory damages in the amount of $[illegible],000 for punitive damages along with interest thereon at the maximum rate allowable under law; reasonable attorney fees and the costs of this action.

[illegible]
[illegible] KUBAT, Plaintiff
[illegible] Gordon Road
Willoughby Hills, OH 44092

JOHN L. SHAW, Plaintiff
37291 Eagle Road
Willoughby Hills, OH 44094

SERVICE

A copy of the foregoing COMPLAINT was mailed by regular United States mail, first class postage prepaid, to Morton O'Ryan, 37400 Hanna Road, Willoughby Hills, Ohio, on this 24 day of January, 19[illegible].

[illegible] KUBAT, Plaintiff

[illegible], Plaintiff

Referendum is threatened as Olmsted okays rezoning

EXHIBIT "I"

Amid threats of a referendum, Olmsted Township trustees voted 2 to 1 for a zoning change which will bring 624 multifamily units to the small community.

The trustees voted unanimously for the construction of 182 single-family homes, but while Trustees Fred Maurer and Edward P. Miller voted for the multi family rezoning, Trustee Robert A. Venefra opposed it.

The approval allows for the single family homes, 444 townhouse units, and 180 apartment suites to be built on 177 acres bordered by Usher, Schady and Sprague roads.

The township's Zoning Commission approved the changes. A unanimous vote against the rezonings by the trustees would have been necessary to overrule the commission's decision.

Venefra said he opposed the multi-family rezoning because of his belief that Olmsted Township should wait for the Regional Plan Commission to finish the township's master plan before approval for rezonings is given.

The area was zoned for single-family homes with a minimum lot size of 15,000 square feet.

Residents at the standing-room-only meeting Saturday night said they would petition for a referendum on the rezonings.

The five member Zone Commission voted 3 to 0 for a portion of the single family request which asked that the commission approve a minimum lot size of 15,000 square feet for some of the homes.

The commission voted 2 to 1 on the two multi family issues.

Two members of the Zone Commission abstained from voting because they had been recently appointed to the commission and had not attended the public hearing for the request.

The county prosecutor's office ruled that the abstention votes would go with the prevailing vote making the commission's vote valid.

CLE-E PRESS 2-27-77 Page C5

Willoughby Hills rejects honor for ex-councilman

By PHIL WIELAND

A resolution of commendation for a former city official is usually routine business but Willoughby Hills Council demonstrated there are exceptions to that rule.

Resolutions were presented for three former officials and Council passed two of them unanimously. Katherine Cramer was commended for her 13 years on the Plan Commission and former councilman James Barr was recognized for 3½ years of service.

However, Council just couldn't bring itself to approve a similar resolution for former councilman George Edgar.

By a vote of 5 to 1 with George Krainock abstaining and Robert Lenz casting the lone approving vote, Council rejected the resolution. Councilmen Morton O'Ryan, Robert Moorehead, Lawrence O'Donnell, James Pratt and J. Warren Smith voted against it.

"He was the leader of a small group of malcontents that by using the recall process attempted to overthrow the government of Willoughby Hills," O'Ryan said.

O'Ryan pointed out that a year ago Edgar was censured by Council for his public statements and added, "It's hardly appropriate that we would now be commending him."

The recall process went to the Ohio Supreme Court where it was finally rejected. Edgar also made statements about Law Director Barry Byron and accused Byron of [illegible] to have the Akron Bar Association investigate him.

O'Ryan said Edgar created a very divisive mood in the community. Three of those who would have been subject to the recall were up for re-election last November and were returned to office by the voters.

"We feel that even if a person disagrees if they are doing their best in an honest desire to serve the community they are entitled to a resolution of commendation. We did not feel that was the case here," O'Ryan said.

Diabetic diet is topic

The Diabetes Unlimited West Inc. will meet in the Busch Community Room, 7501 Ridge Rd. Wednesday, March 8 at 7:45 p.m. Topic of discussion will be "The Diabetic Diet and Eating Out." Donation for non-members is $2.

SuburBriefs

Lakewood to listen

Lakewood Council will have a public hearing tonight to hear residents' suggestions on how the city can improve snow removal and parking problems next winter. The meeting will be at 7:30 in Council chambers.

Geauga County, villages reach accord on levy

Geauga County's 16 townships and five villages have agreed with County Prosecutor John P. Norton that the county-wide health district cannot receive health levy taxes until it first taking monies from township and village operating funds.

The temporary accord between [illegible] and the Republican [illegible] meeting of the Health District [illegible] Council, Norton, Maurer, township trustees chairmen and [illegible] Council heads [illegible] Norton [illegible] proposed levy [illegible] Health [illegible] the [illegible] [illegible] [illegible] health levy unless local operating funds could also be applied.

The agreement reached is in part dependent upon an upcoming meeting among Norton, the Health Board Health Commissioner Jerry Hall and county commissioners.

Two issues will be on the agenda including the 1979 Health District budget and controversy over money into the district's [illegible].

Commissioner James Patterson said it is possible the county can obtain more money. Due to the [illegible] of the commissioners to repeal the $80,000 raised by the levy.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOANNE MACKO, et al	)	
	)	
Plaintiffs	)	Case No. C77-1158
	)	
v.	)	MEMORANDUM
	)	
BARRY BYRON, et al	)	
	)	
Defendants	)	

GREEN, S. J.:

This action is at issue under plaintiffs' amended complaint, which is drawn in three counts. While the said pleading names as parties defendant Paul Mitrovich and Stephen Futterer those parties have previously been dismissed from this action upon a motion directed to the original complaint.

Count One is alleged to arise under the Fourteenth Amendment to the United States Constitution and under 42 U.S.C. §§1983 and 1985. Therein plaintiffs allege that in August, 1976 they commenced the circulation of recall petitions against various public officials of the City of Willoughby Hills, Ohio, those being the defendants Schaefer, DeFrank, Morehead, O'Ryan, O'Donnell and Krsincic; that defendant Monzula was at that time the Clerk of City Council for the City of Willoughby Hills, and defendant Byron was

the Law Director for the municipality; that subsequent to obtaining the proper number of signatures plaintiffs submitted their recall petitions to defendant Monzula; that upon receipt of the said petitions defendant Monzula, acting under color of law and in concert with the other defendants, "did refuse to validate said petitions and further, did maliciously and unlawfully take such actions against said petitions as would render them invalid or cause their acceptance to be so delayed as to prevent the recall from being placed on the November 4, 1976 ballot", as a consequence of which the recall issue did not appear on the ballot; that the defendants "did conspire to deprive plaintiffs and did deprive plaintiffs of the equal protection of the laws and of their privileges and immunities under the laws secured by the 14th Amendment to the United States Constitution."

The second cause of action alleges "a deprivation of plaintiffs' rights secured by the Constitution of the United States, in violation of 42 U.S.C. Section 1983." Factually, it first incorporates the allegations of the first cause of action and then alleges " that at all times material prior to January 1, 1977 defendant Paul Mitrovich was the Prosecuting Attorney for Lake County and that at all times material defendant Stephen Futterer was the Assistant Prosecutor for Lake County." However, as previously noted,

Mr. Mitrovich and Mr. Futterer have been ordered dismissed from this action and, therefore, are improperly named as parties defendant to the amended complaint. It is further alleged that "Defendant Mitrovich, himself, or through defendant Futterer, acting under color of law and in active concert with defendants Schaefer, DeFrank, Morehead, O'Ryan, O'Donnell, Krainic, Byron and Monzula, did conspire to deprive and did deprive plaintiffs of the equal protection of the laws by maliciously and without probable cause, causing an indictment to be issued against plaintiffs charging perjury and various violations of the Ohio laws relating to petitions"; that pursuant to the said indictments warrants were issued for the plaintiffs' arrests and executed upon them; that the defendants' actions were taken under color of law and were "designed to discourage plaintiffs from initiating a second recall drive and were also intended as punishment for plaintiffs having initiated their first recall effort".

The third cause of action is specifically predicated upon an alleged violation of 42 U.S.C. §1985. This count incorporates by reference all prior allegations and further alleges, in substance, that the defendants did conspire to deprive and deprived the plaintiffs of rights guaranteed under the United States Constitution.

This action is before the Court on motions by all remaining defendants for summary judgment, initially filed against the original complaint and renewed against the amended complaint. The amended complaint differs from the original only insofar as it added the third count. Those motions basically present issues of law as to the sufficiency of plaintiffs' claims, the only material outside the pleadings presented under the motions being a decision of the Ohio Supreme Court relating to the matter of the validity of the recall petitions, State ex rel. Macko v. Monzula, 43 Ohio St. 2d 35 (1976).

State ex rel. Macko v. Monzula was an action in mandamus instituted in the Ohio Supreme Court. The factual predicate of the action is recited as follows:

> On September 2, 1976, relators filed petitions with respondent, clerk of city council of Willoughby Hills, seeking recall of the Mayor and five of the seven members of council.
>
> On September 13, 1976, the clerk notified relators that the petitions were defective, and one of the specific reasons given was that "[t]he affidavit (statement) of the circulators is insufficient and invalid."
>
> Relators seek a writ of mandamus requiring the clerk to certify the recall petitions to city council, and requiring council to place the recall issue on the ballot on November 2, 1976. Respondents have filed a motion for summary judgment seeking to dismiss relators' complaint. Ibid.

In granting the motion for dismissal the court held:

> R.C. 3501.38(E) prescribes the form for the affidavit of a circulator on petitions presented to a public officer for the purpose of holding an election on any issue. The statute requires that the circulator must state that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.
>
> The affidavits of the circulators on the petitions filed September 2, 1976, fail to state that to the best of circulator's knowledge and belief all signers were qualified to sign.
>
> This court has consistently demanded that the requirements for circulator's affidavits be strictly complied with. See State, ex rel. Barton, v. Bd. of Elections (1975), 44 Ohio St. 2d 33.
>
> Accordingly, respondents' motion for summary judgment is allowed. Id., pp. 35-36.

In the Court's opinion, this ruling by the Ohio Supreme Court is completely dispositive of the claim advanced in plaintiffs' first cause of action. That claim is premised on the allegations that plaintiffs submitted "valid recall petitions" to defendant Monzula and that defendant Monzula, in furtherance of a conspiracy with the remaining defendants, did "maliciously and unlawfully" refuse to validate such petitions. The Ohio Supreme Court has found that in refusing

to accept the recall petitions defendant Monzula acted properly and lawfully in the discharge of her duties as Clerk of Council. In another context this Court spoke of the underlying dispute as basically one for resolutions by the Ohio courts, Kondat v. City of Willoughby Hills, No. 77-464, memorandum opinion, June 13, 1977. The Ohio Supreme Court has spoken, and its determination is binding herein.

As defendant Monzula cannot be found to have acted unlawfully, it follows that no illegal conspiracy could have existed between defendant Monzula and the other defendants. Accordingly, all defendants are entitled to summary judgment on the first cause of action.

By virtue of the prior dismissal of defendants Mitrovich and Futterer plaintiffs' second cause of action must fail as against the other defendants.

A critical element of a cause of action under 42 U.S.C. §1983 is that the defendants must have acted "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory", Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970). In order for action to be deemed taken under color of state law there must have been a "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law". United States v. Classic, 313 U.S. 299 (1941).

The two defendants who were state officers have been found to be immune from plaintiffs' claims. Those parties were the ones clothed with authority under Ohio law for initiating criminal prosecutions. Therefore, the second cause of action may only be read as charging the other defendants with causing the state officials to initiate the criminal prosecutions. Such allegations do not state a claim of conduct "under color of law" sufficient to support a claim for recovery under 42 U.S.C. §1983. Crow v. Fisher, 523 F. 2d 875 (CA 8, 1975); Barnes v. Dorsey, 480 F. 2d 1057 (CA 9, 1973); Champlain v. M. Breger & Co., 270 F. 2d 46 (CA 2, 1959), cert. den. 361 U.S. 944. As the public officials alleged to have procured the indictments have been dismissed from the action the defendants who are alleged to have conspired with such officials as regards prosecution of the plaintiffs are not subject to suit under §1983. Kurz v. State of Michigan, 548 F. 2d 172, 175 (CA 6, 1977).

This leaves for consideration the third cause of action, that predicated upon 42 U.S.C. §1985.

As that cause of action is basically derivative of the first and second counts dismissal could be ordered based upon the failure of the supporting claims. There is, however, a more basic reason requiring dismissal of the third count. In order to state a claim for relief under §1985 it must be alleged that the defendants acted with a

class-based invidiously discriminatory animus. Azar v. Conley, 456 F. 2d 1382 (CA 6, 1972); See, Griffin v. Breckenridge, 403 U.S. 88 (1971). The third count of plaintiffs' amended complaint is devoid of any allegations which would meet that standard.

The motions of all moving parties for summary judgment in their favor on plaintiffs' amended complaint will be granted.

United States Senior District Judge

April 9, 1979

GREEN, S. J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOANNE MACRO, et al	)	
	)	
Plaintiffs	)	Case No. C77-1158
	)	
v.	)	ORDER
	)	
BARRY BYRON, et al	)	
	)	
Defendants	)	

UPON CONSIDERATION of the motions of defendants O'Donnell, DeFrank, Morehead, O'Flynn, Krainock, Byron, Schaefer and Monzula for summary judgment on plaintiffs' amended complaint,

IT IS HEREBY ORDERED that the said motions are granted and judgment is entered in favor of all moving defendants on plaintiffs' amended complaint; see this Court's memorandum of even date.

United States Senior District Judge

April 9, 1979

see 79
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